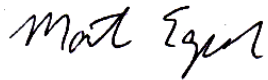


DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF CO v. Defendant(s) GARY DRAGUL et al.	DATE FILED: December 23, 2020 9:03 AM CASE NUMBER: 2018CV33011 <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2018CV33011 Division: 424 Courtroom:
Order:Receiver's Motion to Approve Settlement Agreement with Dragul Family Members w/attach	

The motion/proposed order attached hereto: GRANTED.

No response or objection has been filed.

Issue Date: 12/23/2020



MARTIN FOSTER EGELHOFF
District Court Judge

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 303.606.2433</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: Tung Chan, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p>Defendants: Gary Dragul; GDA Real Estate Services, LLC; and GDA Real Estate Management, LLC</p>	
<p>Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1900 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;">RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH DRAGUL FAMILY MEMBERS</p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), asks the Court to enter an order approving a settlement agreement he has reached

with Samuel, Charli, and Spencer Dragul (the “Children Defendants”), and Shelly Dragul (collectively, the “Dragul Family Members”), a copy of which is submitted as **Exhibit 1** (the “Settlement Agreement”).

I. Background

1. On August 15, 2018, Gerald Rome, Securities Commissioner for the State of Colorado (the “Commissioner”), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities.

2. On August 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the “Receivership Order”), appointing Harvey Sender receiver for Dragul and the GDA Entities and their respective properties and assets, as well as their interests and management rights in related affiliated and subsidiary businesses (the “Receivership Estate” or the “Estate”). Receivership Order at 2, ¶ 5.

3. Under the Receivership Order, the Receiver has the authority to prosecute causes of action against third-parties, including claims held by creditors. Receivership Order ¶¶ 13(o) & (s).

4. On August 30, 2019, the Receiver filed the case of *Sender v. Charli Dragul, et al.*, 2019 CV 33373, Denver District Court against the Dragul Family Members (the “**Litigation**”), in which the Receiver sought to recover what he contended were fraudulent transfers the Dragul Family Members received from Dragul and the GDA Entities. Defendants disputed the claims in the Litigation. The Litigation was set for an eight-day bench trial to commence December 14, 2020. The Parties participated in mediation for more than ten hours on November 30, 2020, which

culminated in the execution of the Settlement Agreement. The proposed Settlement Agreement resolves claims that were or could have been asserted in the Litigation and the Receiver hereby seeks Court approval of that Agreement.

II. The Settlement Agreement is in the best interest of the Estate and its creditors.

5. There exists little Colorado authority with respect to factors the Court should consider in determining whether to approve a Receiver's settlement agreement. In analogous bankruptcy contexts, courts consider whether "the settlement is fair and equitable and in the best interests of the estate." *Rich Dad Operating Co., LLC v. Zubrod (In re: Rich Global, LLC)*, 652 F. App'x 625 (10th Cir. 2016) (quoting *Official Comm. of Unsecured Creditors of W. Pac. Airlines, Inc. v. W. Pac. Airlines, Inc. (In re W. Pac. Airlines, Inc.)*, 219 B.R. 575, 579 (D. Colo. 1998)). In considering whether to approve a settlement, bankruptcy courts consider four primary factors: "the probable success of the underlying litigation on the merits, the possible difficulty in collection of a judgment, the complexity and expense of the litigation, and the interests of creditors in deference to their reasonable views." *Kopp v. All Am. Life Ins. Co. (In re Kopexa Realty Venture Co.)*, 213 B.R. 1020, 1022 (B.A.P. 10th Cir. 1997); *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 105 B.R. 971, 977 (D. Colo. 1989). Courts also recognize that deference should be given to the business judgment of the Receiver. *See, e.g., In re OptInRealBig.com, LLC*, 345 B.R. 277, 291 (Bankr. D. Colo. 2006) (deferring to the business judgment of the bankruptcy trustee).

6. Considering these factors, the Court should approve the Settlement Agreement. In the complaint filed in the Litigation, the Receiver identified gross transfers made to the Dragul Family Members as follows: Shelly (\$36,579,428.58); Charli (\$314,158.74); Samuel (\$712,946.55); and Spencer (\$543,083.86). These transfers commenced in 1996 and continued until August 2018, just prior to the Receiver's appointment. Dragul was using the accounts of his Family Members as conduits to further his Ponzi scheme and routinely transferred funds into and out of their accounts and thereafter to other accounts when it suited his purposes.

7. The Dragul Family Members contended that applicable statutes of limitation barred the Receiver from recovering transfers made more than four years before the Litigation was commenced, and that they were good faith transferees and provided reasonably equivalent value for the transfers. The following table shows the net transfers the Dragul Family Members received during the four-years before the Litigation was filed:

Dragul Family			
Net Transactions Within Four Years From Filing			
8/31/15 - 8/30/18			
Reconciled to Bank Statements			
Name	Cash Received	Cash Repaid	Net
Shelly Dragul	\$14,262,637.40	(\$13,100,451.61)	\$1,162,185.79
Spencer Dragul	\$236,462.97	(\$155,600.00)	\$80,862.97
Samuel Dragul	\$253,257.55	(\$161,000.00)	\$92,257.55
Charli Dragul	\$130,989.97	(\$76,500.00)	\$54,489.97
Total	\$14,883,347.89	(\$13,493,551.61)	\$1,389,796.28

8. The Dragul Family Members also asserted other defenses in the Litigation. As reflected in the table above, the net transfers to the Children

Defendants during the four-year period were approximately \$227,610, and the net transfers to Shelly were \$1.16 million.

9. Under the proposed Settlement Agreement, the Children Defendants have agreed to pay the Estate \$125,000 within 45 days after Receivership Court approval of the Agreement, and upon the Estate's receipt of that payment, the Receiver has agreed to dismiss the claims against the Children Defendants in the Litigation with prejudice, and the Receiver and the Children Defendants have agreed to release each other from all potential claims.

10. Within 30 days of Receivership Court approval of the Settlement Agreement, Shelly has agreed to file for protection under the Bankruptcy Code, and the Receiver has agreed that, based on information currently available to him, he has no current intent to pursue a non-dischargeability action against Shelly or object to her discharge. with the caveat that depending on what facts or circumstances come to light during her bankruptcy case, the Receiver may reevaluate and proceed in whatever manner he determines to be in the best interest of the Estate. Upon entry of her discharge by the Bankruptcy Court, the Receiver has agreed to dismiss the claims against Shelly in the Litigation without prejudice. Pending the Dragul Family Members performance of their obligations under the Settlement Agreement, the Litigation will be stayed.

11. The predicate facts for the claims in the Litigation were complex and an eight-day trial would have been expensive. The Receiver investigated the Dragul Family Members' ability to satisfy any judgment that might enter against them and

obtained financial statements from them. Although the Receiver believes his claims are strong, and that he was likely prevail at trial, the Estate's ability to recover the full amount of any judgment that might enter was questionable, and the expense and delay in doing so would have created an additional expense to the Estate.

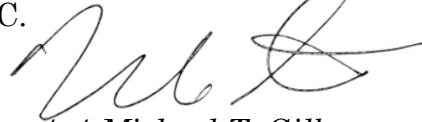
12. Given the potential costs of litigation, the uncertainty of prevailing, and the questionable ability to collect any judgments that might enter, the Receiver believes that the proposed Settlement Agreement is in the best interest of the Estate and its creditors and will result in the prompt payment of settlement funds to the Estate.

13. Pursuant to paragraph 10 of the Receivership Order, Court approval of any motion filed by the Receiver shall be given as a matter of course within 10 days after the motion is filed and served. As reflected by the certificate of service below, this Motion is being served on all parties who have appeared in this case and on all currently known creditors of the Estate.

WHEREFORE, the Receiver asks the Court to enter an order approving the proposed Settlement Agreement.

Dated: December 8, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR
P.C.



By: /s/ Michael T. Gilbert

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Michael T. Gilbert

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ATTORNEYS FOR THE RECEIVER

Attachment to Order - Case No. 18CV00033-011

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2020, I served a true and correct copy of the foregoing **RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH DRAGUL FAMILY MEMBERS** via CCE to:

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***Counsel for Tung Chan, Securities
Commissioner***

Counsel for Defendant Gary Dragul

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nicole@cohenblacklaw.com

Counsel for Dragul Family Members

CERTIFICATION OF E-SERVICE ON KNOWN CREDITORS

In accordance with this Court's February 1, 2019 Order clarifying notice procedures for this case, I also certify that a copy of the foregoing is being served by electronic mail on all currently known creditors of the Receivership Estate to the addresses set forth on the service list maintained in the Receiver's records.

/s/ Salowa Khan

Allen Vellone Wolf Helfrich & Factor P.C.